

**DECISION**



*A. Rindinger*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**8349**

**FILE:** B-192485

**DATE:** November 17, 1978

**MATTER OF:** Mr. George R. Beecherl

**DIGEST:** Employee of Federal Government, reduced in grade due to a reduction in force (RIF) effective July 1, 1973, was entitled to 2 years retained pay and on appeal 1 year later won the right to a higher, but still reduced grade retroactive to original RIF date. Due to error he continued to be paid retained pay beyond the 2-year period, and on request for waiver under 5 U.S.C. 5584 disclaimed fault on basis that he was not advised of retained pay termination date, yet admits knowledge of the 2-year entitlement period. Waiver is denied since the Standard Form 50's issued to him in connection with RIF and the correction thereof specifically referred to the July 1, 1973 inception date and he therefore should have known its termination date.

This action is in response to a letter dated June 12, 1978, from Mr. George R. Beecherl, an employee of the National Aeronautics and Space Administration, requesting that this Office review and reconsider our Claims Division's denial of waiver of the claim of the United States against him in the amount of \$543.20, representing overpayment of compensation incident to his employment and reduction in force affecting that employment.

The record in Mr. Beecherl's case shows that as a result of a reduction in force he was changed from grade GS-12, step 7, to grade GS-9, step 10, effective July 1, 1973. It is reported that the employee was entitled to retained pay for a period of 2 years incident to this reduction in force. The employee appealed that reduction in force with the Civil Service Commission.

Before his appeal had been decided he was further reduced to grade GS-6, step-10, due to another reduction in force. A new period of saved pay began at the time of the second reduction in force.

On August 16, 1974, the Civil Service Commission Appeals Review Board found, in effect, that the reduction to GS-9 was improper and

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that the reduction should only be to the GS-11 position level. The reduction to grade GS-11 was to be made retroactive to the original reduction-in-force date, July 1, 1973. By Standard Form 50, dated September 3, 1974, the original reduction in force was corrected to show that he was reduced from grade GS-12, step 7, to GS-11, step 10, with entitlement to retained pay at the GS-12 level from that earlier date. The further reduction in force was cancelled. Thus, he was entitled to continue to receive that retained pay until June 30, 1975, the completion date of the 2-year period after his initial reduction in force. However, due to administrative error, the employee's retained pay was not timely terminated. It continued to be paid until October 11, 1975, when the error was discovered and which resulted in a salary overpayment of \$574.24.

The basis for waiver denial by our Claims Division was that since the effective date of the action, which reduced his grade and upon which his retained pay rate period was predicated, had occurred effective July 1, 1973, then in July 1975 he should have been sufficiently aware of retained pay termination to put him on the notice to question the continued receipt of pay at the higher level.

The employee contends that although he was aware of the 2-year limitation on retained pay he did not know when his entitlement expired since that date was not indicated on any of the Standard Form 50's received by him.

Section 5584 of title 5, United States Code, authorizes waiver of erroneous payment of pay and allowances to Government employees. However, subsection 5584(b) limiting that authority, provides in pertinent part:

"(b) the Comptroller General or the head of the agency \* \* \* may not exercise his authority under this section to waive any claim--

"(1) if, in his opinion, there exists, in connection with the claim an indication of \* \* \* fault \* \* \* on the part of the employee \* \* \*."

The word "fault" as used in the foregoing has been interpreted as including something more than a proven overt act or omission

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by an employee. Fault is considered to exist if in the light of all the facts it is determined that an employee exercising reasonable diligence should have known that an error existed and taken action to have it corrected. The standard employed by this Office is to determine whether a reasonable person should have been aware that he was receiving payment in excess of his proper entitlements.

The employee admits knowing that the permitted period for retained pay was 2 years. While none of the Standard Form 50's issued in his case showed a termination date for retained pay, it is noted that they did show the inception date of his grade reduction. The Standard Form 50, dated June 28, 1973, showed a grade reduction effective date of July 1, 1973, for retained pay purposes. The corrected Standard Form 50, issued retroactively in compliance with the Appeals Review Board action, also referred to July 1, 1973, as the inception date for the corrected reduction in force and another Standard Form 50 issued that day cancelled the reduction in force to grade GS-6. Mr. Beecherl was allowed backpay incident to the cancelled reduction in force to grade GS-6.

Based on the foregoing, it is our view that Mr. Beecherl should have known that his retained pay entitlement would terminate on June 30, 1975, and not at a later date. Accordingly, the action by our Claims Division denying this claim is sustained.

Deputy

*V. J. K. 11/1/75*  
Comptroller General  
of the United States